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Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEONILA NUNEZ,

Plaintiff,

v.

UNITED STATES OF AMERICA, UNITED STATES
DISTRICT COURT PROBATION, UNITED STATES
PROB., and E. D. WARD-CUPRIL,

Defendants.

ANSWER

07 Civ. 3795 (RJH)

ELECTRONICALLY FILED

Defendants United States of America, United States District Court Probation, United States District Prob. and E.D. Ward-Cupril, by their attorney, Michael J. Garcia, United States Attorney for the Southern District of New York, respectfully answer plaintiff's complaint on information and belief as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint.
2. Admit the allegations of Paragraph 2 of the Complaint.
3. Paragraph 3 of the Complaint sets forth plaintiff's allegations of jurisdiction to which no response is required.

4. Deny the allegations of Paragraph 4 of the Complaint, and aver that the United States Probation Office for the Southern District of New York is a unit of the United States District Court for the Southern District of New York, a part of the Judicial Branch of the United States of America.

5. Deny the allegations of Paragraph 4 of the Complaint, and aver that the United States Probation Office for the Southern District of New York is a unit of the United States District Court for the Southern District of New York, a part of the Judicial Branch of the United States of America.

6. Neither admit nor deny the allegations of Paragraph 6 of the Complaint because they constitute conclusions of law, except aver that on June 16, 2006, the Probation Office for the Southern District of New York faxed to the Administrative Office of the United States Courts a copy of a Standard Form 95, dated June 9, 2006, and signed by plaintiff.

7. Neither admit nor deny the allegations of Paragraph 7 of the Complaint because they constitute conclusions of law, except aver that on June 16, 2006, the Probation Office for the Southern District of New York faxed to the Administrative Office of the United States Courts a copy of a Standard Form 95, dated June 9, 2006, and signed by plaintiff.

8. Neither admit nor deny the allegations of Paragraph 8 of the Complaint because they constitute conclusions of law, except aver that on June 16, 2006, the Probation Office for the Southern District of New York faxed to the Administrative Office of the United States Courts a copy of a Standard Form 95, dated June 9, 2006, and signed by plaintiff.

9. Admit the allegations of Paragraph 9 of the Complaint.

10. Admit the allegations of Paragraph 10 of the Complaint.

11. Admit the allegations of Paragraph 11 of the Complaint.

12. Admit the allegations of Paragraph 12 of the Complaint.
13. Admit the allegations of Paragraph 13 of the Complaint.
14. Admit the allegations of Paragraph 14 of the Complaint.
15. Admit the allegations of Paragraph 15 of the Complaint.
16. Admit the allegations of Paragraph 16 of the Complaint.
17. Admit the allegations of Paragraph 17 of the Complaint.
18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint.
19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.
20. Admit the allegations of Paragraph 20 of the Complaint.
21. Admit the allegations of Paragraph 21 of the Complaint.
22. Admit the allegations of Paragraph 22 of the Complaint.
23. Admit the allegations of Paragraph 23 of the Complaint.
24. Admit the allegations of Paragraph 24 of the Complaint.
25. Admit the allegations of Paragraph 25 of the Complaint.
26. Admit the allegations of Paragraph 26 of the Complaint.
27. Admit the allegations of Paragraph 27 of the Complaint.
28. Admit the allegations of Paragraph 28 of the Complaint.
29. Deny the allegations of Paragraph 29 of the Complaint.
30. Deny the allegations of Paragraph 30 of the Complaint.
31. Deny the allegations of the first paragraph numbered 31 on pages 7 and 8 of the Complaint.

32. Deny the allegations of the second paragraph numbered 31 on page 8 of the Complaint.¹

33. Deny the allegations of Paragraph 33 of the Complaint.

34. Deny the allegations of Paragraph 34 of the Complaint.

35. Deny the allegations of Paragraph 35 of the Complaint.

36. Deny the allegations of Paragraph 36 of the Complaint.

37. Deny the allegations of Paragraph 37 of the Complaint.

38. Deny the allegations of Paragraph 38 of the Complaint.

39. Deny the allegations of Paragraph 39 of the Complaint.

40. The responses contained in Paragraphs 1-31 are incorporated by reference as though fully set forth herein.

41. Deny the allegations of Paragraph 41 of the Complaint.

42. Deny the allegations of Paragraph 42 of the Complaint.

FIRST DEFENSE

Plaintiff's damages, if any, are due in whole or in part to the acts or omissions of others, known or unknown, over whom defendant United States of America exercised no control.

SECOND DEFENSE

Plaintiff's damages were not proximately caused by acts or omissions attributable to the defendant United States of America.

¹ There is no paragraph numbered 32 in the Complaint.

THIRD DEFENSE

Plaintiff is not entitled to recovery under the Comprehensive Motor Vehicle Insurance Reparations Act, N.Y. Ins. Law §§ 5101-5108.

FOURTH DEFENSE

Plaintiff's recovery, if any, must be reduced pursuant to the collateral source statute. N.Y. Civ. Prac. L. & R. § 4545(c).

FIFTH DEFENSE

In the event that defendant United States of America is found to be negligent, which negligence defendant United States of America denies, the negligence of the plaintiff or other parties contributed to causing plaintiff's injuries, and any recovery must be proportionately reduced.

SIXTH DEFENSE

Defendant is not liable for interest prior to judgment pursuant to 28 U.S.C. § 2674.

SEVENTH DEFENSE

Defendant is not liable for damages not recoverable under 28 U.S.C. § 2674.

EIGHTH DEFENSE

Plaintiff has failed to mitigate her damages.

NINTH DEFENSE

The United States of America is the only proper defendant in a suit brought pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2679.

WHEREFORE, defendant United States of America demands judgment dismissing plaintiff's complaint and granting such further relief as this Court deems proper, including costs and disbursements.

Dated: New York, New York
August 31, 2007

Respectfully submitted,

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
Attorney for Defendant

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